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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/071,932

02/08/2002

Robert J. Nordstrom

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EXAMINER

ROY, BAISAKHI

ART UNIT

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3737

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DELIVERY MODE

03/25/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/071,932	Applicant(s) NORDSTROM ET AL.	
	Examiner BAISAKHI ROY	Art Unit 3737	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24, 26-34, 36-38, 40-44, 46, 47 and 49-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24, 26-34, 36-38, 40-44, 46, 47, and 49-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 24, 26-34, 36-38, 40-44, 46, 47, and 49-52 have been considered but are moot in view of the new ground(s) of rejection with respect to the newly added subject matter.

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 24, 26-34, 36, and 37 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-39 of copending Application No. 10/099,881. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims in '881 directed to screening/classification of cervical tissue using fluorescence and reflectance data anticipates the method claims in current application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

3. Claims 24, 26-34, 36, and 37 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-48 of copending Application No. 10/418,415. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims in '415 directed to screening/classification of cervical tissue using fluorescence and reflectance data anticipates the method claims in current application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

4. Claims 24, 26-34, 36, and 37 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-41 of copending Application No. 10/295,794. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims in '794 directed to screening/classification of cervical tissue using fluorescence and reflectance data anticipates the method claims in current application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

5. Claims 24, 26-34, 36, and 37 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-46 of copending Application No. 10/418,922. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims in '922

directed to screening/classification of cervical tissue using fluorescence and reflectance data anticipates the method claims in current application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

6. Claims 24, 26-34, 36-38, 40-44, 46, 47, and 49-52 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-61 of copending Application No. 10/530,741. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims in '741 directed to screening/classification of cervical tissue using fluorescence and reflectance data anticipates the method claims in current application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 24, 26-34, 36-38, 40-44, 46, 47, and 49-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Utzinger et al. in view of Lin et al. (6377841). Utzinger et al. disclose a method and apparatus of classifying cervical tissue by generating multispectral images of the cervix these images may include images of fluorescence, reflectance, polarized reflectance, or any combination (col. 3 lines 32-43).

The system includes illumination source 15 for use in fluorescence excitation, where the illumination fibers may be configured to select one or more wavelengths of illumination radiation (col. 4 lines 63 – col. 5 line 39). The system includes illumination source 14 while generating reflectance data (col. 5 lines 40-58). Utzinger et al. teach the combination of fluorescence and reflectance tests to enhance diagnostic accuracy since fluorescence may be sensitive to tissue metabolism while reflectance may be sensitive to tissue structure (col. 6 lines 52-65). The reference teaches the collection of fluorescence as an initial screening tool and then further enhancing the diagnostic procedure by collecting reflectance data (col. 12 lines 7-21). Utzinger et al. teach obtaining additional optical information such as video information and optical images (col. 5 lines 59 – col. 6 lines 26). Pre-cancerous, cancerous, and many other cervical tissue conditions are screened/diagnosed (col. 11 lines 46-54). Utzinger et al. teach classifying cervical tissue for abnormalities based on reflectance data but do not explicitly teach using the amplitude of the processed reflectance data to classify tissue. In the same field of endeavor Lin et al. disclose a method of classifying biological specimen include an amplitude detector to determine the amplitude of processed reflectance spectral data (col. 3 lines 15-36). It would have therefore been obvious to one of ordinary skill in the art to use the teaching by Lin et al. to modify the teaching by Utzinger et al. for the purpose of effectively classifying tissue abnormalities.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BAISAKHI ROY whose telephone number is (571)272-7139. The examiner can normally be reached on M-F (7:30 a.m. - 4p.m.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian L. Casler can be reached on 571-272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3737

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brian L Casler/
Supervisory Patent Examiner,
Art Unit 3737

BR
/B. R./
Examiner, Art Unit 3737